

REFUGEE DETERMINATION

WHAT IT IS AND HOW IT WORKS

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Immigration and
Refugee Board

La Commission de l'immigration
et du statut de réfugié

Canada



The Nansen Medal



Presented to the
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by
PROFESSOR
FREDA HAWKINS

In 1986, the United Nations High Commissioner for Refugees presented the Nansen Medal to the people of Canada in recognition of this country's outstanding efforts on behalf of refugees. This was the first time in the more than forty-year history of the Medal that it had ever been awarded to an entire nation.

Canada has a long and honourable tradition when it comes to accepting refugees from all over the world. That tradition is as old as Canada itself. In fact, since the Second World War, Canada has provided a new homeland for more than half a million men, women and children fleeing from fear and persecution in their own countries.

Over the past few years we have seen changes to the patterns of claims which have resulted in huge backlogs of persons claiming refugee status. Quite simply, the old system could not cope. The response of the Parliament of Canada was to create the new Immigration and Refugee Board.

While the process is being reformed, however, the commitment of the Canadian men and women who comprise the Board remains true to the traditions and values that Canadians have long espoused towards refugees and immigration. Our commitment is also to the letter and the spirit of the international agreements to which Canada is a signatory.

Fairness, compassion and openness lie at the heart of the new refugee determination system which has been streamlined and made more efficient. In each case before the IRB, benefit of the doubt will lie with the refugee claimant. Overall, our new process should prove more effective and more adequately reflect the humanitarian values for which Canadians are so well known.

Gordon Fairweather

Gordon Fairweather
Chairman
Immigration and Refugee Board

CANADA'S TRADITION OF SAFE HAVEN



Canada is home to literally millions of citizens descended from refugees fleeing oppression and persecution. Refugee migrations have been part of the mainstream of Canadian history for three centuries. Those people arriving in Canada after fleeing their original homelands represent all languages, religions, colours and traditions.

Many Canadians are justly proud of ancestors who came to these shores as United Empire Loyalists following the American Revolution, or as escaped American slaves via the underground railroad.

The ancestors of many other Canadians came to Canada singly or in groups fleeing oppression. For example: Scottish Highlanders forced off their lands; Irish farmers starved during the potato famines; Mohawks and other members of the Six Nations Indians stripped of their lands in the Ohio Valley because they sided with the British during the American Revolution.

Other groups fled religious persecution, such as the Mennonites and Doukhobors.

After the Second World War, many refugees from Europe found safe haven in Canada. During the national uprising in 1956, thousands of Hungarians fled to Canada; in 1968, it was Czech refugees who came to Canada following their uprising against Soviet occupation.

In the 1970s, people seeking refuge here included Vietnamese boat people, Ugandans fleeing political oppression and political refugees from Central American countries.

In recognition of this proud and lasting tradition of welcoming those most in need of safe haven, the people of Canada received the Nansen Medal from the United Nations High Commissioner for Refugees.

THE CHALLENGE TO OUR REFUGEE DETERMINATION SYSTEM



For a variety of reasons, the number of people making claims for refugee status in Canada rose dramatically in the 1980s. At the start of the decade, refugee claims numbered about 1,600. In 1987, some 27,000 refugee claims were initiated. Over this same period, about 70 per cent of claims for refugee status made in Canada were rejected after examination.

The old process of refugee determination was never designed to handle large volumes of claimants. The process was very time consuming and resulted in an ever growing backlog of persons awaiting the final outcome of their claims. As the backlog grew, so did the incentive for non-genuine refugees to claim refugee status – for the simple reason claimants could remain in Canada as long as five years until their cases were resolved.

The process itself had become a major contributing factor to the growth in unfounded claims. At the same time, legitimate refugees were forced to endure long delays before receiving confirmation of their protection by Canada as Convention refugees.

When the Immigration and Refugee Board took over responsibility for refugee determination at the end of 1988, there were over 60,000 claimants still waiting to have their cases decided.

The new refugee determination process faces a three-fold challenge:

- to confirm the status of genuine refugees as quickly as possible and in a manner which reflects Canada's humanitarian traditions;

- to ensure that individuals and groups cannot use refugee claims as a means to circumvent our national immigration policies;

- to reassure the world community that Canada has an effective and humane refugee determination process consistent with its international commitments.

Meeting this challenge is the responsibility of the Immigration and Refugee Board (IRB).

MEETING THE CHALLENGE

The purpose of the Immigration and Refugee Board is to act in the spirit of Canada's safe haven tradition. Its challenge is to adjudicate fairly and quickly all refugee claims so that Canada can offer protection to genuine refugees while discouraging those who are making refugee claims for reasons other than a need for protection, such as avoiding the regular immigration process.

Adjudication of refugee claims will be made in accordance with the Canadian Charter of Rights and Freedoms, the United Nations Convention relating to the Status of Refugees, and Canada's humanitarian traditions. The goal is a determination system that provides refugee claimants with a fair, honest and efficient appraisal of their claims.

The Immigration and Refugee Board is an "administrative tribunal". It handles refugee claims in a manner that is both flexible and informal. At all times it gives benefit of the doubt to the claimant. The IRB operates independently of Immigration Canada and the political process. Instead of reporting directly to a Minister, the IRB reports through a Minister to Parliament.

The IRB consists of two distinct divisions: the Convention Refugee Determination Division (CRDD) and the Immigration Appeal Division (IAD). The former – the Refugee Division – deals exclusively with the determination of refugee claims. The latter – the Appeal Division – hears appeals from people such as permanent residents of Canada and holders of valid visitors' visas who have been denied entry to or ordered removed from Canada. The Appeal Division also hears appeals from Canadian citizens and permanent residents who have sponsored applications by close family members wishing to immigrate to Canada, which have subsequently been refused by a visa officer.



HOW CANADA DETERMINES WHO IS A REFUGEE

The refugee determination procedure in Canada is the means through which people may seek to receive protection according to the 1951 United Nations Convention relating to the Status of Refugees.

'Convention refugees' are people who, because of a well-founded fear of persecution due to their race, religion, nationality, membership in a particular social group or political opinions, are unwilling or unable to return to their country of nationality or former habitual residence.

Upon claiming refugee status in Canada, the claimant goes through two stages before being formally confirmed as a refugee and acquiring the right to remain in Canada.



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STAGE ONE: REFERRING A CASE TO THE IRB



6

A Claim is Made

A request for refugee status can be made at any port of entry into Canada. A person who is already in Canada, can make a claim at any Canada Immigration Centre or at the beginning of an immigration inquiry.

Senior Immigration Canada officers first review any humanitarian and compassionate factors that may warrant special consideration. In some cases, individuals may be granted permanent residence in Canada on humanitarian grounds without having to go through the refugee determination process.

The Initial Inquiry or Hearing

If the claimant is at a port of entry and is not admissible to Canada, or is inside Canada but has contravened the Immigration Act, then that person will be referred to an immigration inquiry which will first deal with the immigration matters. Claimants who are admissible to Canada or are visitors legally in Canada are referred to a hearing.

Whether they are referred to an inquiry or a hearing, claimants are heard by an official from Immigration Canada called an adjudicator and a member of the Refugee Division of the IRB.

After consideration by the adjudicator of any issues related to admissibility or violations of the Immigration Act, an initial review of the claim takes place before the two decision-makers, the immigration adjudicator and the IRB member. The hearing has two phases, "eligibility" and "credible basis".



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First, the eligibility of the claimant is considered. People who are not eligible for consideration as a Convention refugee include:

those with refugee status in another country;

those coming to Canada from a 'safe third country';

previously rejected claimants not out of Canada for more than 90 days;

persons convicted of serious crimes;

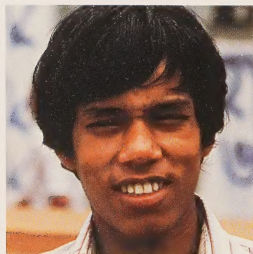
known war criminals and security threats.

If either the adjudicator or the IRB member decides the claimant is eligible for consideration, the initial hearing then considers any evidence that would establish whether or not the claim has some credible basis. This 'credibility' evidence includes the human rights record of the claimant's country of origin as well as previous Refugee Division decisions on nationals of the same country.

If the claim is rejected by both members of the initial hearing panel and the claimant is in violation of the Immigration Act, then action is taken to remove the claimant from Canada. If the claim is accepted at this initial stage by either panel member, it is referred immediately to a full hearing before the Refugee Division of the IRB.

At this point, refugee claimants enter Stage Two of the process. The Immigration and Refugee Board alone becomes responsible for determining their claim.

STAGE TWO: HOW THE IRB CONFIRMS REFUGEE STATUS



9

The Refugee Determination Hearing
This hearing takes place before a panel consisting of two members of the IRB's Refugee Division. Generally, these full hearings will take place in private in order to protect the safety of claimants and their families. However, representatives of the UN High Commissioner for Refugees may observe, should they choose to, and, in certain circumstances, officials from Immigration Canada may participate in the hearing.

During this hearing, the panel applies the definition for refugees which was agreed to in the 1951 United Nations Convention relating to the Status of Refugees to the evidence presented.

Only one member of the panel is required to decide in favour of the claimant in order for refugee status to be confirmed.

Landing in Canada

Following the favourable conclusion of the refugee determination hearing, the claimant may apply for and receive landed immigrant status in Canada.

The Right to Appeal

Throughout all stages of this refugee determination process, the claimant is entitled to appeal negative decisions to the Federal Court of Canada. However, the claimant must obtain leave of a Federal Court judge to initiate such a review, which will only consider questions of law or 'capricious' findings of fact. The Federal Court will not consider the merits of the refugee claim.



10

GETTING THE BEST INFORMATION TO MAKE A DECISION

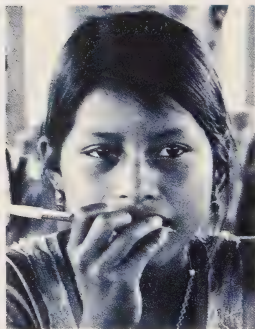
Central to the successful operation of the refugee determination procedure is the IRB Documentation Centre. This Centre will provide the information requirements of both the Refugee Division and the Appeal Division as well as serving as a public resource for refugee and migration issues. It will be a principal source in Canada for information on refugees, including profiles of conditions in countries from which refugee claimants are leaving. This information will be available to all participants in the determination process as well as to the public at large.

The Documentation Centre will act initially as a bibliographic source – knowing what is available and where it can be found – rather than attempting to compile everything in a central location. The Centre will also be a source of information on Canadian law and jurisprudence on issues relating to the Immigration Act.

Because of its unique role, the Documentation Centre will attempt to become a model of national and international co-operation in information sharing and in the maintenance of reliable and current information. The Centre intends to be linked to other computer data bases worldwide, including those at The Hague, Bonn, and at the office of the UN High Commissioner for Refugees in Geneva. Links will also be developed to non-governmental organizations such as Amnesty International in order to ensure Canada has the best possible information available.



FAIRNESS GOVERNS THE REFUGEE PROCESS



The new refugee determination system has been designed to function fairly, protecting the claimant's interests throughout the procedure.

Speedy hearings are important aspects of justice and fairness. The first step in the determination process – the initial hearing – will occur between three and seven days after a person makes a claim for refugee status. Cases that proceed to the second stage – the full Refugee Division hearing – may be dealt with in as little as eight weeks and no more than several months.

The hearings are **non-adversarial** in nature. Every effort is made to ensure that claimants can put forward their cases as thoroughly as possible. To this end, claimants have the right to be full participants in the process. Moreover, hearing procedures will not be restricted to any technical or legal rules of evidence. A neutral Refugee Hearing Officer is responsible for ensuring the best available evidence is advanced at the hearing.

Claimants are entitled to be represented by counsel. In certain circumstances, legal counsel will be provided for the initial hearing at government expense. Claimants also have the protection of the **Charter of Rights and Freedoms**.

Throughout every stage of the determination process, the refugee claimant is given the **benefit of the doubt**. It requires the unanimous decision of the panel to reject a claim; the decision of a single panel member will move a claim forward and, ultimately, approve refugee status.



COMPOSITION OF THE IMMIGRATION AND REFUGEE BOARD



14

The Immigration and Refugee Board is Canada's largest administrative tribunal, with over 120 full-time members making up the Refugee Division and about 22 making up the Appeal Division. Because of the anticipated workload, both Divisions may also take on as many part-time or additional full-time members as are required. Members are appointed to cover all major centres across Canada as required by workflows.

The IRB is headed by a **Chairman** who is the chief executive officer of the Board. It is the Chairman's role to oversee the management of the Board's resources, ensure the achievement of the Board's goals and objectives and take responsibility for Board members and support staff.

Each Division of the IRB is headed by a **Deputy Chairman** who manages the members of the Appeal Division and Refugee Division respectively. The Deputy Chairmen set and oversee performance and productivity standards for members and provide leadership in the conduct of hearings and in ensuring philosophical and operational consistency.

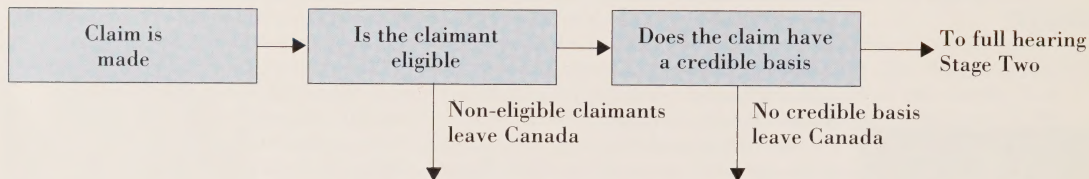
Each regional office is headed by an **Assistant Deputy Chairman** for each of the two Divisions. Assistant Deputy Chairmen oversee the members attached to each regional centre, allocate work, monitor performance and arrange training to ensure that members are performing in a consistent and fair manner.

Members preside at Refugee Division and Appeal Division hearings and render independent decisions on the cases before them. They are accountable to Assistant Deputy Chairman for performance standards and operational policies as well as ensuring that each claimant receives a fair hearing.

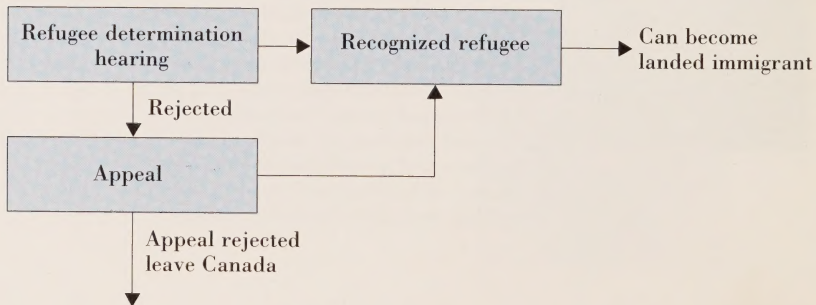
An **Executive Director**, reporting to the Chairman, implements and manages policies, systems and administrative procedures essential to support the effective functioning of the IRB.

THE REFUGEE DETERMINATION PROCESS

STAGE ONE : INITIAL HEARING



STAGE TWO : THE REFUGEE DETERMINATION HEARING



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This booklet explains, in general, Canada's refugee determination process.

It is not, however, a legal document. For precise, legal information, please consult the Immigration Act and Regulations.

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